

Senate Study Bill 3168

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CO=CHAIRPERSON KREIMAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act addressing the safe operation of motor vehicles by minors
2 by prohibiting the use of handheld cellular phones by certain
3 drivers under eighteen years of age, establishing criminal and
4 civil liability for providing alcoholic beverages to persons
5 under legal age, providing for an identification number on
6 kegs of beer, and making penalties applicable.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
8 TLSB 5865SK 81
9 dea/je/5

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1 1 DIVISION I
1 2 CELL PHONE USE
1 3 Section 1. Section 321.178, Code Supplement 2005, is
1 4 amended by adding the following new subsection:
1 5 NEW SUBSECTION. 2A. CELL PHONE USE RESTRICTED. A person
1 6 under eighteen years of age who has been issued a restricted
1 7 license under subsection 2 shall not operate or utilize a
1 8 handheld cellular telephone, or other handheld device used for
1 9 remote two-way communication, while operating a motor vehicle
1 10 on a highway. This subsection does not apply when the motor
1 11 vehicle is at a complete stop off the roadway or when a
1 12 cellular telephone or other handheld communication device is
1 13 used to call 9-1-1 or to contact law enforcement authorities
1 14 or an emergency response agency in an emergency situation.
1 15 Sec. 2. Section 321.180B, Code 2005, is amended by adding
1 16 the following new subsection:
1 17 NEW SUBSECTION. 2A. CELL PHONE USE RESTRICTED. A person
1 18 under eighteen years of age who has been issued an instruction
1 19 permit or an intermediate driver's license under this section
1 20 shall not operate or utilize a handheld cellular telephone, or
1 21 other handheld device used for remote two-way communication,
1 22 while operating a motor vehicle on a highway. This subsection
1 23 does not apply when the motor vehicle is at a complete stop
1 24 off the roadway or when a cellular telephone or other handheld
1 25 communication device is used to call 9-1-1 or to contact law
1 26 enforcement authorities or an emergency response agency in an
1 27 emergency situation.
1 28 Sec. 3. Section 321.194, Code Supplement 2005, is amended
1 29 by adding the following new subsection:
1 30 NEW SUBSECTION. 1A. CELL PHONE USE RESTRICTED. A person
1 31 under eighteen years of age who has been issued a driver's
1 32 license under this section shall not operate or utilize a
1 33 handheld cellular telephone, or other handheld device used for
1 34 remote two-way communication, while operating a motor vehicle
1 35 on a highway. This subsection does not apply when the motor
2 1 vehicle is at a complete stop off the roadway or when a
2 2 cellular telephone or other handheld communication device is
2 3 used to call 9-1-1 or to contact law enforcement authorities
2 4 or an emergency response agency in an emergency situation.
2 5 Sec. 4. Section 805.8A, subsection 4, paragraph a, Code
2 6 Supplement 2005, is amended to read as follows:
2 7 a. For violations under sections 321.174A, 321.178,
2 8 subsection 2A, sections 321.180, 321.180B, 321.193, and
2 9 321.194, the scheduled fine is thirty dollars.
2 10 DIVISION II
2 11 ALCOHOLIC BEVERAGES
2 12 Sec. 5. Section 123.47, subsection 1, Code Supplement

2 13 2005, is amended to read as follows:
2 14 1. a. A person shall not sell, give, or otherwise supply
2 15 alcoholic liquor, wine, or beer to any person knowing or
2 16 having reasonable cause to believe that person to be under
2 17 legal age.
2 18 b. A person who is the owner, lessee, or who has control
2 19 of property that is not a licensed premises shall not permit
2 20 any person, knowing or having reasonable cause to believe the
2 21 person to be under legal age, to consume or possess on such
2 22 property any alcoholic liquor, wine, or beer.
2 23 Sec. 6. Section 123.47, subsection 4, Code Supplement
2 24 2005, is amended to read as follows:
2 25 4. Except as otherwise provided in subsections 5 and 6, a
2 26 person who is of legal age, other than a licensee or
2 27 permittee, who ~~sells, gives, or otherwise supplies alcoholic~~
2 28 ~~liquor, wine, or beer to a person who is under legal age in~~
2 29 ~~violation of this section~~ subsection 1 commits a
2 30 serious misdemeanor punishable by a minimum fine of five
2 31 hundred dollars.
2 32 Sec. 7. Section 123.47, subsection 5, Code Supplement
2 33 2005, is amended to read as follows:
2 34 5. A person who is of legal age, other than a licensee or
2 35 permittee, who sells, gives, or otherwise supplies alcoholic
3 1 liquor, wine, or beer to a person who is under legal age in
3 2 violation of ~~this section~~ subsection 1, paragraph "a", which
3 3 results in serious injury to any person commits an aggravated
3 4 misdemeanor.
3 5 Sec. 8. Section 123.47, subsection 6, Code Supplement
3 6 2005, is amended to read as follows:
3 7 6. A person who is of legal age, other than a licensee or
3 8 permittee, who sells, gives, or otherwise supplies alcoholic
3 9 liquor, wine, or beer to a person who is under legal age in
3 10 violation of ~~this section~~ subsection 1, paragraph "a", which
3 11 results in the death of any person commits a class "D" felony.
3 12 Sec. 9. Section 123.50, subsection 1, Code 2005, is
3 13 amended to read as follows:
3 14 1. Any person who violates any of the provisions of
3 15 section 123.49, except subsection 2, paragraph "h", or who
3 16 fails to affix upon sale, defaces, or fails to record a keg
3 17 identification sticker or produce a record of keg
3 18 identification stickers pursuant to section 123.138, shall be
3 19 guilty of a simple misdemeanor. A person who violates section
3 20 123.49, subsection 2, paragraph "h", commits a simple
3 21 misdemeanor punishable as a scheduled violation under section
3 22 805.8C, subsection 2.
3 23 Sec. 10. Section 123.92, unnumbered paragraph 3, Code
3 24 2005, is amended to read as follows:
3 25 Notwithstanding section 123.49, subsection 1, any person
3 26 who is injured in person or property or means of support by an
3 27 intoxicated person who is under legal age or resulting from
3 28 the intoxication of a person who is under legal age, has a
3 29 right of action for all damages actually sustained, severally
3 30 or jointly, against a person who is not a licensee or
3 31 permittee and who dispensed or gave any beer, wine, or
3 32 intoxicating liquor to the intoxicated underage person when
3 33 the nonlicensee or nonpermittee who dispensed or gave the
3 34 beer, wine, or intoxicating liquor to the underage person knew
3 35 or should have known the underage person was intoxicated, or
4 1 who dispensed or gave beer, wine, or intoxicating liquor to
4 2 the underage person to a point where the nonlicensee or
4 3 nonpermittee knew or should have known that the underage
4 4 person would become intoxicated. If the injury was caused by
4 5 an intoxicated person who is under legal age, a person who is
4 6 not a licensee or permittee and who dispensed or gave beer,
4 7 wine, or intoxicating liquor to the underage person may
4 8 establish as an affirmative defense that the intoxication did
4 9 not contribute to the injurious action of the underage person.
4 10 For purposes of this paragraph, "dispensed" or "gave" means
4 11 the act of physically presenting a receptacle containing beer,
4 12 wine, or intoxicating liquor to the underage person, or
4 13 deliberately and knowingly making available a receptacle
4 14 containing beer, wine, or intoxicating liquor to the underage
4 15 person with direct knowledge that the underage person intends
4 16 to consume the beer, wine, or other intoxicating liquor, but
4 17 without physically presenting such receptacle to the underage
4 18 person, whose actions or intoxication results in the
4 19 sustaining of damages by another person. However, a person
4 20 who dispenses or gives beer, wine, or intoxicating liquor to
4 21 an underage person, or who deliberately and knowingly makes
4 22 available a receptacle containing beer, wine, or intoxicating
4 23 liquor to an underage person, shall only be liable for any

4 24 damages if the person knew or should have known that the
4 25 underage person was under legal age.
4 26 Sec. 11. Section 123.138, Code 2005, is amended to read as
4 27 follows:

4 28 123.138 BOOKS OF ACCOUNT REQUIRED.

4 29 1. Each class "A" or special class "A" permittee shall
4 30 keep proper books of account and records showing the amount of
4 31 beer sold by the permittee, and these books of account shall
4 32 be at all times open to inspection by the administrator and to
4 33 other persons pursuant to section 123.30, subsection 1. Each
4 34 class "B" and class "C" permittee shall keep proper books of
4 35 account and records showing each purchase of beer made by the
5 1 permittee, and the date and the amount of each purchase and
5 2 the name of the person from whom each purchase was made, which
5 3 books of account and records shall be open to inspection
5 4 pursuant to section 123.30, subsection 1, during normal
5 5 business hours of the permittee.

5 6 2. Each class "B", "C", or special class "C" liquor
5 7 control licensee and class "B" or "C" beer permittee who sells
5 8 beer for off-premises consumption shall affix to each keg of
5 9 beer an identification sticker provided by the administrator.
5 10 For the purposes of this section, "keg" means all durable and
5 11 disposable containers with a liquid capacity of five gallons
5 12 or more. Each class "B", "C", or special class "C" liquor
5 13 control licensee and class "B" or "C" beer permittee shall
5 14 also keep a record of the identification sticker number of
5 15 each keg of beer sold by the licensee or permittee with the
5 16 name and address of the purchaser and the number of the
5 17 purchaser's driver's license, nonoperator's identification
5 18 card, or military identification card, if the military
5 19 identification card contains a picture and signature. This
5 20 information shall be retained by the licensee or permittee for
5 21 a minimum of ninety days. The records kept pursuant to this
5 22 section shall be available for inspection by any law
5 23 enforcement officer during normal business hours.

5 24 3. The division shall provide the keg identification
5 25 stickers described in subsection 2. Each sticker shall
5 26 contain a number and the following statement: "It is unlawful
5 27 to sell, give, or otherwise supply any alcoholic beverage,
5 28 wine, or beer to any person under legal age. Any person who
5 29 defaces this sticker shall be guilty of criminal mischief
5 30 punishable pursuant to section 716.6 and shall cause the
5 31 forfeiture of any deposit, if applicable." The identification
5 32 sticker shall be placed on the keg at the time of retail sale.
5 33 The licensee or permittee shall purchase the stickers referred
5 34 to in this section from the division and shall remit to the
5 35 division deposits forfeited pursuant to this subsection due to
6 1 defacement. The cost of the stickers to licensees and
6 2 permittees shall not exceed the division's cost of producing
6 3 and distributing the stickers. The moneys collected by the
6 4 division relating to the sale of stickers and forfeited
6 5 deposits shall be credited to the beer and liquor control
6 6 fund.

6 7 4. Enforcement of this section shall be implemented
6 8 uniformly throughout the state. For purposes of uniform
6 9 implementation, a county or municipality shall not set
6 10 requirements or establish a penalty which is higher or more
6 11 stringent than the requirements or penalties enumerated in
6 12 this section, section 123.50, and section 716.6. The division
6 13 shall establish by rule procedures relating to the forfeiture
6 14 and remittance of deposits pursuant to subsection 3.

6 15 EXPLANATION

6 16 DIVISION I. This division of the bill prohibits a motor
6 17 vehicle operator under 18 years of age with an instruction
6 18 permit, an intermediate license, a minor's restricted license,
6 19 or a minor's school license from using a handheld cellular
6 20 telephone or other handheld two-way communication device while
6 21 driving. Exceptions are allowed for 911 calls and calls to
6 22 law enforcement authorities or emergency response agencies in
6 23 an emergency situation. In addition, the bill does not
6 24 prohibit the use of a cell phone when the motor vehicle is at
6 25 a complete stop off the roadway. Persons under 18 years of
6 26 age who have been issued a full driver's license are not
6 27 affected by the new provision.

6 28 Under graduated driver licensing provisions or minors'
6 29 school licensing provisions, the penalty for a violation is a
6 30 simple misdemeanor, punishable by a scheduled fine of \$30.
6 31 The bill provides the same penalty for a violation by a person
6 32 with a minor's restricted license.

6 33 DIVISION II. This division of the bill concerns alcoholic
6 34 beverage control relating to providing alcohol to underage

6 35 persons, dram shop liability, and providing keg identification
7 1 numbers for sales of beer in containers of five gallons or
7 2 more.
7 3 Code section 123.47 is amended to provide that it shall be
7 4 unlawful for a person who owns, leases, or has control of
7 5 property that is not a licensed premises to permit any person,
7 6 knowing or having reasonable cause to believe the person to be
7 7 under legal age, to consume or possess on the property any
7 8 alcoholic liquor, wine, or beer. A violation of this
7 9 provision would be a serious misdemeanor punishable by a
7 10 minimum fine of \$500.
7 11 Code section 123.92 is amended to extend civil liability to
7 12 a person who deliberately and knowingly makes available a
7 13 receptacle containing beer, wine, or intoxicating liquor to an
7 14 underage person with direct knowledge that the underage person
7 15 intends to consume the beer, wine, or other intoxicating
7 16 liquor and the underage person becomes intoxicated and injures
7 17 another person. Current law provides that a person must
7 18 physically present such receptacle to a person under legal age
7 19 for that person to be liable for injuries caused by that
7 20 intoxicated underage person.
7 21 The bill provides in Code section 123.138 that specified
7 22 liquor control licensees and beer permittees who sell beer for
7 23 off-premises consumption shall affix to each keg of beer an
7 24 identification sticker provided by the administrator of the
7 25 alcoholic beverages division of the department of commerce.
7 26 The bill provides that a "keg" of beer shall refer to all
7 27 durable and disposable containers with a liquid capacity of
7 28 five gallons or more.
7 29 The bill also provides that each of the specified licensees
7 30 and permittees shall keep a record of the identification
7 31 sticker number of each keg of beer sold by the licensee or
7 32 permittee with the name and address of the purchaser and the
7 33 number of the purchaser's driver's license, nonoperator's
7 34 identification card, or military identification card. The
7 35 bill provides that this information shall be retained for a
8 1 minimum of 90 days, and shall be available for inspection by
8 2 any law enforcement officer during normal business hours. The
8 3 bill provides that the identification sticker shall be affixed
8 4 to the keg at the time of the retail sale.
8 5 The bill provides that the alcoholic beverages division
8 6 shall provide the keg identification stickers, and that each
8 7 sticker shall display an identification number and a statement
8 8 that it is unlawful to sell, give, or otherwise supply any
8 9 alcoholic beverage, wine, or beer to any person under legal
8 10 age, and that any person who defaces the sticker shall be
8 11 guilty of criminal mischief and shall forfeit a deposit, if
8 12 applicable. The bill provides that the licensee or permittee
8 13 shall purchase the stickers from the division, that the
8 14 licensee or permittee shall be authorized to retain a
8 15 forfeited deposit, that the cost of the stickers shall not
8 16 exceed the division's production and distribution cost, and
8 17 that the moneys collected by the division from the sale of the
8 18 stickers or from forfeited deposits shall be credited to the
8 19 beer and liquor control fund.
8 20 The bill provides that penalty provisions contained in Code
8 21 section 123.50, regarding violations being punishable as a
8 22 simple misdemeanor, shall be applicable to a licensee or
8 23 permittee who fails to affix upon sale, defaces, or fails to
8 24 record a keg identification sticker or produce a record of keg
8 25 identification stickers. The bill provides that the
8 26 provisions of the bill shall be enforced and implemented
8 27 uniformly across the state, and that a county or municipality
8 28 shall not set requirements or establish a penalty which is
8 29 higher or more stringent than the requirements or penalty
8 30 provisions made applicable in Code section 123.50 or 716.6.
8 31 LSB 5865SK 81
8 32 dea:rj/je/5